
United States
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Circuit Court of Appeals
For the Ninth Circuit

TOM PAPPAS, CHARLES H.
FERGUSON and OLIVER
THOMPSON,
Plaintiffs in Error,
vs.
THE UNITED STATES OF
AMERICA,
Defendant in Error.

} No, 4037

BRIEF OF TOM PAPPAS, ONE OF THE
PLAINTIFFS-IN-ERROR

UPON WRIT OF ERROR TO THE UNITED
STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASH-
INGTON, NORTHERN DIVIS-
ION

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[P. D. Monckton,
Clerk]

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Tom Pappas, one of the plaintiffs-in-error was
charged with the crime of violating the National
Prohibition Act, as follows:

1. Having possession on June 30th, 1922, at Seattle, of the following intoxicating liquors containing more than one-half percent by volume of Alcohol, to-wit:

(a) Forty-six bottles, each containing one-fifth gallon of whiskey.

(b) One hundred twenty pints of beer.

2. Transportation on the same day at the same place of the same intoxicating liquors.

3. Sale on the same day at the same place of the same intoxicating liquors.

The Jury found plaintiff-in-error Tom Pappas guilty on all three counts.

He was sentenced to imprisonment for six months in the King County Jail in King County, Washington, and to pay a fine of Five Hundred (\$500.00) Dollars and costs.

ASSIGNMENTS OF ERROR

1. That the Court erred in allowing testimony to go to the jury during the trial of said cause, over the objection of plaintiff-in-error's counsel, of the testimony of various witnesses as to the statements made without the presence of plaintiff-in-error as to the three charges contained in the indictment.

2. That the said Court erred in allowing testimony to go to the jury during the trial of the case, over the objection of plaintiff-in-error's counsel, which was excepted to at the time by the plaintiff-in-error's counsel, and exception allowed.

3. That the said Court erred in overruling the plaintiff-in-error's motion for a new trial.

4. That the said Court erred in instructing the jury with relation to a conspiracy, and further instructing the jury that if they found a conspiracy, the evidence of one of the plaintiffs-in-error might be used against all, to which plaintiff-in-error excepted and exception allowed.

5. That the Court erred in failing to instruct the jury that the statement of a conspirator is not evidence against his co-conspirator, unless there is other corroborating testimony.

6. That the Court erred in denying the motion of plaintiff-in-error to dismiss the indictment and for an instructed verdict for the plaintiff-in-error upon the following grounds:

(a) That the plaintiff-in-error was acting as a Deputy Sheriff of King County, and was under the direction of deputies of the Sheriff of King County in the transaction.

(b) The testimony affirmatively shows that the plaintiff-in-error was acting in the transaction without any criminal intent whatever and in furtherance of the enforcement of the law by his superior officers.

(c) That the entire evidence failed to show that the plaintiff-in-error transported the liquor as charged in the indictment.

(d) That the entire evidence failed to show that the plaintiff-in-error had in his possession the liquor as charged in the indictment.

(e) The testimony affirmatively shows that the plaintiff-in-error did not commit the offense of selling the liquor charged in the indictment but the acts therein alleged and essential to the crime charged, were the acts of other persons than the plaintiff-in-error, but instead the proof of the defendant-in-error showed that the sale of liquor essential to the proof of the crime charged was another person's crime, and no competent testimony was offered to connect plaintiff-in-error with the offense charged.

That for about five years last past Tom Pappas, one of the plaintiffs-in-error has held a commission as a Deputy Sheriff of King County, Washington, and as such Deputy Sheriff has been employed by

the present Sheriff Matt Starwich and his predecessor, John Stringer, from time to time on special assignments or details to obtain evidence and make arrests on particular cases; among other cases assigned to him he obtained evidence of the operation of the largest still which has been seized in King County, and assisted in the seizure of said still and the arrest and conviction of the operator thereof: He has not received a regular monthly salary from the sheriff for his services, but has been compensated for the work done by him from time to time as aforesaid.

That prior to June 29th, 1922, Matt Starwich, as Sheriff of King County, Washington, called him and requested that he investigate and obtain evidence of the operation of one Charles L. Ferguson, co-plaintiff-in-error in this case; that Sheriff Starwich requested him to confer with Deputy Sheriff J. C. Hill and Deputy Sheriff Earl Ramage and take his instructions from them. He was instructed to gain the confidence of Ferguson by whatever means were necessary; that after receiving said instructions he got in touch with the said Ferguson and also with one H .V. Mooring, and arranged with Ferguson and Mooring that Ferguson should sell and deliver to Mooring the liquor mentioned in the information in this case;

He went with Ferguson in the latter's automobile to the residence of Mooring in the City of Seattle, and from there he and Ferguson went away in the said automobile for the purpose of getting the liquor and delivering it to Mooring; that it was his plan, and he expected, to accompany Ferguson to the latter's cache for the purpose of getting the liquor, and thus ascertaining the location of the cache. Ferguson, however, upon leaving Mooring's house, proceeded in his machine to Sixth and Pike Street in Seattle, where Ferguson got in touch with one Oliver Thompson, the other plaintiff-in-error. Thompson was a man whom this plaintiff-in-error had never seen nor known before. Ferguson and Thompson thereupon had some conversation together and stated to this plaintiff-in-error that they would not at the time take him to the cache, but that Ferguson and Thompson would go to the cache and get the liquor and would pick him up in about twenty minutes at Times Square where he should wait for them. He did wait at Times Square for about an hour before Ferguson and Thompson returned. During that time he did not know whether Ferguson and Thompson had abandoned him and would not return or whether they would return at any moment. He therefore did not call for

any additional assistance from the Sheriff's office at that time for fear of exciting the suspicions of Thompson and Ferguson if they should appear.

Thompson and Ferguson did return after about an hour's absence, bringing with them in the machine the liquor mentioned in the information in this case. He got in the machine with them and went to Mooring's residence. This plaintiff-in-error got out of the machine and was going in Mooring's house to telephone the Sheriff's office. Mooring called him back and asked that he assist in pulling a tent or canvas over by the garage. He complied with the request and as he did Mooring thrust unto this plaintiff-in-error's hands a roll of currency and a check which were rolled up with a rubber band around them. He started to protest and to tell Mooring that the money did not belong to him and should go to Ferguson. Before this plaintiff-in-error could finish the sentence and before he could hand the money back two Federal Prohibition Agents appeared and informed him that he was under arrest. He informed the prohibition agents at that time that he was a deputy Sheriff and asked permission to telephone to the Sheriff's office.

On the trial of this case, Deputy Sheriff J. C. Hill and Deputy Sheriff Earl Ramage testified on

behalf of this plaintiff-in-error substantially to the same facts hereinabove set forth with relation to this plaintiff-in-error's commission as a Deputy Sheriff. They testified that he was working under their instructions and in his official capacity as a Deputy Sheriff, and for the purpose of obtaining evidence concerning Ferguson and his cache in the very transaction for which he was prosecuted and convicted. In good faith and in obedience to the instructions of the Sheriff's office, was endeavoring to suppress law violation and was endeavoring specifically to obtain evidence concerning said Ferguson and his supposed supply of liquor for the purpose of the prosecution and conviction of said Ferguson and the suppression of his illicit dealings. He had no expectation of any gain or pecuniary benefit other than such compensation as he would be paid by the Sheriff of King County for his services in the matter. He did not expect to receive any money from Mooring or any one else and would have returned the money if it had not been for the fact that he was placed under arrest immediately after the money was thrust into his hands.

Respectfully submitted,

DANIEL LANDON,

Attorney for Tom Pappas, One of
the Plaintiffs-in-error